



January 19, 2007

SENATE BILL No. 49

DIGEST OF SB 49 (Updated January 18, 2007 9:25 am - DI 106)

Citations Affected: IC 29-1; IC 29-3.

Synopsis: Probate administration. Provides that when a court has not directed notice by rule, the default certified or registered mail option is replaced by the option to provide notice by first class postage prepaid mail. Specifies that the notice provided by the clerk of court to an heir, a devisee, a legatee, or a creditor when letters testamentary or of administration are issued shall be served by certified mail. Provides that the notice requirements applying to hearings on filed estate accountings also apply to a hearing on a petition for a court to decree the final distribution of an estate. Requires notice to be given by certified mail when a petition for the appointment of a guardian or for the issuance of a protective order is filed under the probate code. Specifies that when a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by certified mail. Removes a provision requiring that notices concerning guardianship petitions be given according to the notice requirements applicable to hearings on guardianship petitions. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2007.

Zakas

January 8, 2007, read first time and referred to Committee on Rules and Legislative Procedure.

January 8, 2007, amended; reassigned to Committee on Judiciary.

January 18, 2007, amended, reported favorably — Do Pass.

SB 49—LS 6335/DI 13+



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January 19, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 49

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-1-1-12 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. **(a)** Unless waived
3 and except as otherwise provided by law, all notices required by this
4 article to be served upon any person shall be served as the court shall
5 direct by rule or in a particular case, ~~either:~~ **by:**
6 **(a)** by **(1)** delivering a copy of the ~~same notice~~ to ~~such the~~ person
7 or by leaving a copy of the ~~same notice~~ at ~~his the~~ **the person's** last
8 and usual place of residence, at least ten (10) days before the
9 hearing, if ~~he the~~ **the person** is a resident of the state of Indiana;
10 **(b)** by **(2)** publication, if the person is a nonresident of the state of
11 Indiana or if ~~his the~~ **the person's** residence is unknown, once each
12 week for three (3) weeks consecutively in ~~some a~~ newspaper
13 printed and circulating in the county where ~~said the~~ court is held,
14 the first day of publication to be at least thirty (30) days prior to
15 the date set for hearing; or in case there ~~be is~~ no newspaper
16 printed in ~~said the~~ county, then in ~~some a~~ newspaper circulating
17 in the county where the proceeding is pending, and designated by

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the judge or clerk;

~~(c) by registered or certified mail, requesting a return receipt;~~ (3) **first class postage prepaid mail** addressed to ~~such~~ **the** person located in the United States, at ~~his~~ **the person's** address stated in the petition for the hearing, to be posted by depositing in any United States post office in this state at least fourteen (14) days prior to the date set for hearing in ~~said~~ **the** notice;

~~(d) by~~ (4) personal service on nonresidents to be served by any officer authorized to serve process in the county of the nonresident, which notice shall be served at least fourteen (14) days prior to the date set for hearing in such notice; or

~~(e) by~~ (5) any combination of two (2) or more of the above.

(b) In all cases where service by publication is ordered but personal service or service by registered mail is not ordered, all persons directed by the provisions of this article, or by order of the court, to be notified, whose names and addresses are known or can by reasonable diligence be ascertained by the party charged with the duty of giving ~~such~~ notice, shall in addition to ~~such~~ **the** published notice **required by order**, be served by a written notice by United States **first class postage prepaid** mail at least fourteen (14) days prior to the date set for hearing in ~~said~~ **the** notice.

(c) The personal representative or party charged with the duty of giving ~~said~~ notice shall furnish the clerk with sufficient copies of ~~said~~ **the** notice, prepared for mailing, and the clerk shall mail the ~~same~~ **notice**.

SECTION 2. IC 29-1-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) As soon as letters testamentary or of administration, general or special, supervised or unsupervised, have been issued, the clerk of the court shall publish notice of the estate administration.

(b) The notice required under subsection (a) shall be published in a newspaper of general circulation, printed in the English language and published in the county where the court is located, once each week for two (2) consecutive weeks. A copy of the notice, with proof of publication, shall be filed with the clerk of the court as a part of the administration of the estate within thirty (30) days after the publication. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county.

(c) The notice required under subsection (a) shall be served by **certified** mail on each heir, devisee, legatee, and known creditor whose name and address is set forth in the petition for probate or letters. The personal representative shall furnish sufficient copies of the notice,

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prepared for mailing, and the clerk of the court shall mail the notice upon the issuance of letters.

(d) The personal representative or the personal representative's agent shall serve notice on each creditor of the decedent:

(1) whose name is not set forth in the petition for probate or letters under subsection (c);

(2) who is known or reasonably ascertainable within one (1) month after the first publication of notice under subsection (a); and

(3) whose claim has not been paid or settled by the personal representative.

The notice may be served by **certified** mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

(e) Notice under subsection (d) shall be served within one (1) month after the first publication of notice under subsection (a) or as soon as possible after the elapse of one (1) month. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d) within one (1) month after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

NOTICE OF ADMINISTRATION

In the _____ Court of _____ County, Indiana.

Notice is hereby given that _____ was, on the ____ day of _____, 20 __, appointed personal representative of the estate of _____, deceased, who died on the ____ day of _____, 20 __.

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All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at _____, Indiana, this ____ day of _____, 20 __.

CLERK OF THE _____ COURT
FOR _____ COUNTY, INDIANA

SECTION 3. IC 29-1-17-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) After the expiration of the time limit for the filing of claims, and after all claims against the estate, including state and federal inheritance and estate taxes, have been determined, paid, or provision made therefor, except contingent and unmatured claims which cannot then be paid, the personal representative shall, if the estate is in a condition to be closed, render ~~his~~ a final account and at the same time petition the court to decree the final distribution of the estate. Notice of the hearing of the petition shall be given ~~to all interested persons.~~ **under IC 29-1-16-6.**

(b) In its decree of final distribution, the court shall designate the persons to whom distribution is to be made, and the proportions or parts of the estate, or the amounts, to which each is entitled under the will and the provisions of this probate code, including the provisions regarding advancements, election by the surviving spouse, lapse, renunciation, adjudicated compromise of controversies, and retainer. Every tract of real property so distributed shall be specifically described therein. The decree shall find that all state and federal inheritance and estate taxes are paid, and if all claims have been paid, it shall so state; otherwise, the decree shall state that all claims except those therein specified are paid and shall describe the claims for the payment of which a special fund is set aside, and the amount of such fund. If any contingent claims which have been duly allowed are still unpaid and have not become absolute, such claims shall be described in the decree, which shall state whether the distributees take subject to them. If a fund is set aside for the payment of contingent claims, the decree shall provide for the distribution of such fund in the event that all or a part of it is not needed to satisfy such contingent claims. If a decree of partial distribution has been previously made, the decree of final distribution shall expressly confirm it, or, for good cause, shall modify said decree and state specifically what modifications are made.

(c) If a distributee dies before distribution to ~~him~~ **the distributee** of ~~his~~ **the distributee's** share of the estate, ~~such~~ **the distributee's** share

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may be distributed to the personal representative of ~~his~~ **the distributee's** estate, if there ~~be~~ **is** one; or if no administration on ~~his~~ **the deceased distributee's** estate is had and none is necessary according to IC ~~1971~~, 29-1-8, the share of ~~such~~ **the deceased** distributee shall be distributed in accordance ~~therewith~~ **with IC 29-1-8.**

(d) The decree of final distribution shall be a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character of their interest therein, subject only to the right of appeal and the right to reopen the decree. It shall operate as the final adjudication of the transfer of the right, title, and interest of the decedent to the distributees therein designated; but no transfer before or after the decedent's death by an heir or devisee shall affect the decree, nor shall the decree affect any rights so acquired by grantees from the heirs or devisees.

(e) Whenever the decree of final distribution includes real property, a certified copy thereof shall be recorded by the personal representative in every county of this state in which any real property distributed by the decree is situated except the county in which the estate is administered. The cost of recording such decree shall be charged to the estate.

SECTION 4. IC 29-1-19-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. Upon the filing of a petition for the appointment of a guardian or the issuance of a protective order under this article, notice shall be given to the incapacitated person, and to other persons ~~in the manner provided by IC 29-3-6;~~ and ~~also to the Department as provided by this chapter;~~ **department by certified mail.**

SECTION 5. IC 29-3-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given **by certified mail** as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.

(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4(a).

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the

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minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

(c) All notices required by this section shall be given in the manner prescribed by IC 29-1-1-12 through IC 29-1-1-14.

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 49, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Judiciary.

(Reference is to SB 49 as introduced.)

LONG, Chairperson

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 49, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 12, after "by" insert "**certified**".

and when so amended that said bill do pass.

(Reference is to SB 49 as printed January 9, 2007.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 1.

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